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Subject:—

ions under the
Bombay Municipal
Act, 1901

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Office of the R.L.A.

It appears that the Vice-President of the Bulsar Municipality has seized from one of the ration shops at Bulsar about a maund ofoverseas jowar exposed for sale under section 142 of the Bombay District Municipal Act, 1901 (Bom. III of 1901) on the ground ofits being unwholesome or unfit for human consumption and filed a test case in the Honorary First Class Magistrate's Court at Bulsar. The papers are referred to the R.L.A. for opinion as to the powers of the Town Municipalities to take action in this case.

2. Section 142 (1) of the District Municipal Act which corresponds to section 176 of the Bombay Municipal Boroughs Act, 1925, empowers the President, Vice-President or any Councillor or Officer authorised by the Municipality to enter any place and inspect any animals, carcasses, meat, poultry, game flesh fish, fruit, vegetables, corn, bread, flour, milk, ghee, butter or other articles intended for human food and in case any such animals, carcasses or other articles appear to be diseased or unsound or unwholesome or unfit forhuman food to seize them. Every article which is not of a perishable nature, if seized, is required to be taken before a Magistrate. If it appears to the Magistrate upon sufficient evidence that any such article is deceased or unsound or unwholesome or unfit for human food the owner or person in whose possession it was found, if the case does not fall under section 273 of the Indian Penal Code (sale of noxious food or drink), is liable to be punished under th

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section with fine which may extend to Rs. 100 and the Magistrate may cause such article to be destroyed or to be disposed of so as to prevent its being exposed for sale or used for food.

3. Whoever sells or offers or exposes for sale, as food any article which has been rendered or become noxious or is in a state unfit for food, knowing or having reason to believe that the same is noxious as food, is liable or punishment under section 273 of the Indian Penal Code. The only difference between the offences under section 273 of the Indian Penal Code and section 142(1) of the District Municipal Act appears to be that under the former section the person must be knowingorhaving reason to believe that the article is noxious as food while under the latter section such knowledge is not necessary and mere possession is punishable.

4. The word "noxious" means injurious to health or unwholesome and not repugnant to one's feelings (Ram Dayal (1923) 46 All 94). In Narumal Jawarmal (1904) 6 Bom. L.R. 520, it was held that the selling of wheat containing a large adminlure of entrancons matter, such as dirt, wood, matches, charcoal etc. dit not constitue an offence under section 273 of the Indian Penal Code. It appears from para.2 of F.C.s note dated 30th January 1947 at page 14 that the jowar in question is fit and wholesome for human consumption and that the only feature about it which might create some prejudice against its use is a certain percentage ofbrokens and its colour.

Prima facie the e is no case for successful prosection under section 142910 of the District Municipal Act and the action taken by the Muninipality was hasty. As corn has been mentioned in the section the minicipality has, however, the powers of entry, inspection and seizure in such cases.

(Sd) S.D.Vyas,
Remembrancer of Legal Affairs.

U.H. to C.S.D.No.1136 dated the 3rd February 1947.
~~No.1136.~~

Office of the R.L.S.

The question whether the various buildings of the Agricultural Institute, Anand, are exempt from payment of the house-tax, was considered in detail in R.L.A's opinion No.3603 dated 13-5-1943, wherein it was pointed out which buildings would be liable to be rated and which could be exempted. The Anand Municipality is, however, not prepared to agree with Government that the property of the Agircultural Institute, Anand, vests in Government. It contends that even if they do vest in Government they are not exclusively used for Government, but areused beneficially so as to indirectly yield revenue. It is thus evident that the Anand Municipality has remained adamant in its attitude long since, and it is unlikely to come to any compromise with Government on the question of payment ofhouse-tax.

2. Consequently, the Secretary of the Institute should, when notice of demandis served on him under section 82(3) of the Bombay District Minicipal Act, 1901, prefer an appeal to the Magistrate under section 86 claiming exemption.(cf.R.L.A's opinion No.3503 dated 13-5-1948).

3. The best course, however, will be t at since Governmenti is primarly liable to pay the minicipal tax, it should file a suit against the Anand Minicipality claiming exemption from payment. Such a suit may be filed after giving one month Previous notice and with in Six months

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from the date of the act complained of, namely, the notice of demand issued under section 62(3). (See section 16(3)).

at page [illegible] (2).

(Sd) D.V.Vyas.

Member Yomcur
Legal Affairs.

U.O.R. to R.C.D.No.1261. Dated the 7th February 1947.

Office of the R.L.A.

Statement of the Case.

The President of Sangola Municipality, Mr.B.B.Chavan, has lost the confidence of themajority of the Councillors. In order to force the resignation of the President, the majority party presistently adjourned meetings, without transacting business in seven successive meetings, with the result that it failed to pass its annual budget for the year 1946-47, and a deadlock has been created.

The President was repeatedly advised by the Collector to resign but he has failed to do so. Efforts to bring about a compromise have also failed.

In order to resolve the deadlockthus created, the Collector of Sholapur has submitted a proposal to remove the President under section 23(7) of the Bombay District Municipal Act, 1901.

The Commissioner, Central Division, has supported the proposal ofthe Collector as he considers that the President is guilty of misconduct. In his endorsement No.Sangola 4/7, dated the 31st October 1946 he observes:

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"The misconduct does not consist in losing the confidence of the majority but in failing to resign instantly when the confidence has been lost. There can be no more complete negation of democratic principles than this. A president when he is in minority, fails to resign, completely upsets the work of a local body and causes rapid and complete deterioration in its conduct of affairs amounting to a form ...ra

From the view point of local Government which is the important view point in this respect such conduct is far more deleterious than for instance a president causing a public scandal by improper behaviour.

A similar question was raised for R.L.A's consideration with regard to removal of the President of th Jejuri Municipality. In that case also though a resolution recording "no confidence" was pased against the President, it was held that his removal count not be justified on the score of misconduct or incapacity. In his opinion No. 8669, dated 8.12.1944 R.L.A. observed:-

" Under section 23(7) of the Bombay District Municipal Act, 1901 the president of a Municipality can be removed only formisconduct or neglect of or incapacity to perform his duty. While construing a similar provision in the Bombay Local Boards Act, 1923 the Advocate General in his Opinion dated 22nd January 1941 observed: 'The incapacity referred to in the sub-section means I think want of capacity i.e. want of power or ability of faculty for the duties in question. The incapacity must I think arise by reason of something lacking in the person concerned e.g. it must be mental incapacity or physical incapacity or even legal incapacity. It has been held that incapacity in the case of trustees means personal incapacity (Re. Bignold L.R. 7 Ch.223). The incapacity mentioned follows the words 'misconduct' and 'neglect(which can only be personal and this context strengthens the view that the incapacity contemplated is personal.' The loss of a majority in the

Board involves no incapacity of the President although his continuance in office thereafter may be irksome to himself and undesirable in the interests of the Municipality. Consequently Mr.Bagwan cannot in the present case be removed from office under section 23(7) merely because he has no majority and has lost the confidence of the board."

The functions of the President have been specified in section 24(1) of the Bombay District Municipal Act, 1901, and in order to avail of the provisions of section 23(7) the misconduct alleged must be in relation be one or otherof these functions. The word "misconduct" has not been defined in the Act but in ordinary parlance "misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same as conduct involving moral turpitude. Misconduct is a violation of definite law (Aiyer's Law Lexicon, p.821). There is no provision in the District Municipal Act requiring a president to vacate his office when the loses confidence of a majority of Councillors. Consequently failure on his part to resign will not amount to mis-conduct; and hence the President cannot beremoved from office under section 23(7).

As, however question is of general importance and is not free from doubt the Advocate General is requested to advise whether Mr.B.B.Chavan can be removed from office

under section 23(7) of the Bombay District Municipal Act, 1901.

(sd) D.V. Vyas

Remembrancer of Legal Affairs.

U.R. to Advocate General, Bombay, No. 9424, dated the 24th December 1946.

No.1 of 1947.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 13th January 1947.

U.O. to the Advocate General, Bombay, -
No. 942, dated the 24th December 1946.

O P I N I O N.

Under Section 23(7) of the Bombay District Municipal Act the President of a Municipality can be removed only for misconduct or neglect of, or incapacity to perform, his duty. The only suggestion against the President of the Gnagala Municipality is that he has not got the support or confidence of the majority of the Councillors, with the consequence that the majority in the Municipality keep on getting the meetings adjourned without any business being transacted, resulting in the every day affairs of the Municipality coming practically to a standstill, and that though there has been a vote of no confidence also passed against the President, the President has not resigned and apparently does not intend to do so. It cannot in my opinion be said that there has been any neglect of duty on his part and certainly no misconduct. The misconduct, neglect or incapacity must be in relation to his duty. Those duties of the President have been specified in Section 24(1) of the Act. 'Misconduct' means acting in breach of or contrary to the duties deliberately, and with a wrongful intention and implies further that such wrongful act should be of the various own volition. On the facts of this case if he has at all failed to perform any of his duties, it is because

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of the action of others and not of his own volition. The 'neglect' must also refer directly to those duties performable by him as President and it is implied that there shall be a voluntary non-performance of something to be done by him On the facts again I think there is no neglect. As to'incapacity' I adopt the opinion of the Advocate General dated the 22nd January 1941. The inability to do something caused by the obstructiveness of another person is not in my opinion incapacity within the meaning of the Section.

There is no duty on him in law to resign and the failure to resign is not therefore a fact which brings him within section 23(7) of the Act so that he can be removed. The apparent remedy seems to be eitheran immediate dissolution on supercession followed by a dissolution and at some future time.

Sd/- C K. J

Advocate General.

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Office of the R.L.A.

A copy of the opinion of the Advocate General, Bombay No.1 of 1947 dated the 13th January 1947 together with the statement of the case prepared for him is forwarded herewith.

(Sd) J.V.Vyas,

for Remembrancer of Legal Affairs.

E.K.N.9/5/56. U.O. to G.P. No. 912 dated the 25th January 1947.
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Section 33(1) provides that the President or Vice President, if appointed a memberof any Committee, shall be ex-officio Chairman thereof. Under sub-section (2) the municipality may appoint a Chairman for every Committee of which there is no ex-officio Chairman. The words used in sub-section (1) are "if appointed a member" and not "if he is a member". The membership of the Committee must be by virtue of an appointment qua President or Vice President at the time of the appointment he must hold either office. His subsequent elevation be that office would not convert his initial appointment qua councillor into an appointment qua President. A case of that kind would not be covered by section 33(1). Reading the two sub-sections together, it would seem that the scheme is that eitherthe President or Vice-President is appointed in that capacity as a member in which case he becomes the ex-officio Chairman, or where no such appointment is made, some other member is to be appointed Chairman, as has been done in this case. The Committees are appointed only for one year. The contingency of a member of the Committee becoming the President himself during that year is of very rare occurance and the provision in sub-section (1) is not, therefore, substantially opposed to the general expectation that the President should not be in a subordinate position on the Committee. The interpretation adopted in paragraph

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3 pf G.D. Note at p.17 is both natural and reasonable; and the view taken therein is correct.

(sd) D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to H. & L. G.Dept. No.4278 dated the 28th April 1947.

Office of the R.L.A.

Under rule 3 of the Election Rules prescribed for the Municipality of Belapur Road the Municipal District is divided into seven wards specifying the number of councillors to be elected by and the number of seats reserved for sections of the inhabitants in each ward. In other words all wards are general constituencies with reservation of seats for Muslims and other sections in some. Consequently the Muslims have a right to vote at and be candidaates at the general elections even for constituencies where there are now held for some wards where no seats for Muslims were reserved, the Muslims were not allowed to exercise their franchise which they had a right to do. Consequently elections for these wards are also void. As the election was void there would be no municipality duly constituted. The course suggested by Mr.Mokashi and others in their petition at pp.31-33 that the elections for wards where no seats were reserved for Muslims should not be disturbed and that re-election for the wards in which seats for Muslims are reserved should be held would not be legally feasible.

(sd)D.V.Vyas.

Remembrancer of Legal Affairs.

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U.R. to H. & L.G. Deptt. No- 4429, dated the May 1947.

Office of the R.L.A.

The opinion given by the Remembrancer of Legal Affairs (Mr.Wild) No.1878, dated 29-9-1922, itself based upon the former opinion No.3-M dated 6-5-1920 does, in my view, require reconsideration. A Municipality can impose an octroi limits for consumption or use therein. By consumption we mean "using up", In Dullabh Shivlal V.T.C. Hope et al. 8 Bom.H.C.R. (A.C.J.) p.213 the words for consumption were interpreted to mean for the purpose of being manufactured. There is no ambiguity about the meaning of the word "use". "Use" in this collocation must be given its natural plenary meaning. Its ordinary dictionary meaning is "the act of employing a thing for any esp. a profitable) purpose; utilization or employment for or with some aim or purpose, application or conversion to some (esp. good or useful) end." New English Dictionary Edited by Murrey. In British Motor Syndicate, Ltd. V.Taylor and Son, (1900) 1 ch.577 at p. 583 Sterling J quoted with approval the meaning assigned to the word use in Johnson's Dictionary viz. "to employ to any purpose"; and added that "it is, therefore, a word of wide signification". It was held in that case that bringing into England articles which infringed a patent and sending them abroad where they were sold to foreign purchasers, thus merely transporting them within England was making use of the invention. Ginning cotton is undoubtedly employing it for a profitable purpose, converting it to some end. Processing a raw material is a much use as manufacturing it into a finished product; and it has never been contended that spinning or weaving cotton does not constitute its use. The imposition of octroi on

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cotton brought into the octroi limits for being ginned and re-exported is, therefore, within the authority conferred by section 59(iv) of the Bombay Districts Municipal Act, 1901.

2. The attention of the G.D. is, however, invited to the Rules for the levy of octroi framed by the Bagalkot municipality (p.79) which speak of "levy on such articles as are brought into the town for sale or for consumption". The G.D. may consider the desirability of bringling this rule (and similar rules framed by other local bodies) in line with the wording employed in section 59(iv).

(sd) D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to G.D. No.4402, dated the 30th April 1947.

Office of the R.L.A.

It appears that the Presidential election for the Rajapur Municipality was held on 18th April 1946 and Mr.Nhanesaheb, the retiring president, was again elected as President. The position of the parties in the Municipal Body, consisting of 11 members is, 4 Muslims, 4 Congressmen and 3 Hindu Mahasabhaits. On the date of the Presidential election all the Congress members remained absent and Mr. Nhanesaheb managed to be elected as President inspite of the opposition from the three Mahasabha members. Thereafter these 4 Congress members formed a coalition with the 3 Mahasabha members, thus forming a majority party. These 7 members sent a non-confidence resolution againt the President on 26th April 1946, asking him to resign forthwith. But the President ruled out this resolution on 15th May 1946, on which day it was taken up for discussion, as inadimissible, being beyond the provisions of the District Municipal Act.

Thus the friction between the majority party and the President started. At the next general meeting on 8th July 1946 the following three resolutions were moved by the majority party which were also ruled out by the President:

(i) This meeting proposed to cancel the resolution of 18th April 1946 electing the President for the ensuing three years.

(ii) That this meeting recommends to the Bombay Government the removal of the President Mr. Nhanesaheb on account of the misconduct and disgraceful conduct shown in the illegally ruling out the motions put in by the majroity party.

That this meeting proposes that the President should not spend even a pie from the municipal funds, except for the establishment charges and of the Fair Prices shop without the a proval of the majority party, as President has no confidence of the majority party.

Mr. B.P. Patel, the then Collector of Ratnagiri who held enquiry reported.

" It is true that the resolution of non-confidence, if read, does not refer to any act of the President after his election. Therefe ence in it to his conduct as President in previous tviennium appears to be irrelevant. But the resolut'on lays stress on the means adopted by Mr.Nhanesaheb for getting himself elected as President. These means have beenalleged to be unfair and unbecoming manoeuvres and may count towards misconduct of the Pres dent, as t.ey form part of the Presidential election itself. Further the disallowance of the non-confidence motion as having no support in the provisions of the Act with the deliberate intention to suppress the opinion of the Board and somehow to stick to the post amounts to misconduct as it is quite against the principles of democracy, for which he will be liable for removal under section 23(7) of the district Municipal Act.

While rulin, out the first resolution moved at the meeting on 8th July 1946 the President pointed out sections 17 and 23(7) to defend his action. This ruling appears to me quite arbitrary and unconstitutional since it aims at divestin, a Councillor of his inherent power to move any kind of resolution connected with the Municipality. As regards the third resolution I am of opinion that the conduct of these seven members is not reasonable.

As regards the non-confidence motion I may further say that the terms in which the non-confidence motion is couched seems to be unexceptionable. The ruling given by the President is ultra vires. I am therefore of the opinion that the President's action in ruling out lawful motions with the delibrate intention in suppress the opinion of the body appears to come under misconduct under section 23(7) of the Municipal Act".

Mr. Benni who succeeded Mr.B.P. Patell was asked to report on representation of the M.L.A's of Ratnagiri, has stated:-

" The disallowance of the non-confidence resolution by the President Mr. Nhaneaaheb against him or a motion for his removal was not legal. The election of a President is not a resolution that could be cancelled or rescinded by a Municipality by a subsequent resolution under section 26(2). In the present case the President has not allowed the non-confidence resolutions to be moved against him and it is possible t at he might have thought that the legal position was as he conceived or he had authority to so disallow, though wrongly. In such a case the normal course would be that the Government should point out to him his mistake and ask him to allow such motions against him to be discussed by the Municipality. If still he persists in not allowing such motions, then we can hold him to be perverse and to have committed an act of misconduct."

After considering the reports of Messrs. B.P.Patel and Banni H.M. (L.S.G.) in his minutes at page 87 observes:

"It is clear that Mr.Benni and Mr.Patel hold conflicting views as regards action in this case. I would like to have R.L.A's opinion on the point whether action under section 23(7) of the Bombay District Municipal Act can be taken in this case".

The R.L.A. is requested to advise.

Section 23(7) of the Bombay District Municipal Act, 1901 provides:-

" Every president and every vice-president shall be removable from his office as such president or vice-president by the Provincial Government for misconduct, neglect of, or incapacity to perform his duty and the term of office of every president and of every vice-president shall cease on the expiry of his term of office as councillor".

It is apparent that under section 23(7) a president is not liable to be removed from his office on a non-confidence motion of the majority party in the Municipality (cf. sec.21 of the Bombay Municipal Boroughs Act, 1925). He can be removed by Government only for misconduct or neglect of duty or incapacity to perform his duty. The question therefore would boil down to this whether the

fact that the President Mr. Bhanesaheb ruled out as inadmissible the resolutions moved at the meetings held on 15th May 1946 and 8th July 1946 expressing non-confidence amounts to misconduct within the meaning of section 23(7).

In his opinion No.1, dated the 13th January 1947 the Advocate General has observed:

" Misconduct means acting in breach of or contrary to the duties deliberately and with a wrongful intention and implies further that such wrongful act should be of the person's own volition".

As stated above under section 23(7) the Municipality has no power to remove its president by a resolution. It is true that a president who does not enjoy the confidence of the majority party should, if he desires to be constitutional, resign his office and the only way for the majority party to express non-confidence in the president is to move a resolution to that effect and such a resolution is perfectly competent. Since however there is no provision in the Act providing for the power of the Municipality to remove its president by a resolution of non-confidence, it is possible that a president, who is not aware of the constitutional position of a democratic institution like the Municipality, may consider that a non-confidence motion would be ruled out as inadmissible. Consequently it is very difficult to say that Mr. Bhanesaheb is guilty of misconduct unless it could be proved that he had full knowledge of the legal position and yet deliberately ruled out as inadmissible the non-confidence motion moved at the meeting called on 15th May 1946. The first resolution moved at the meeting

called on 8th July 1946 related to the concellation of the resolution of 18th April 1946 electing the President for the ensuing three years. This resolution was ruled out by Mr. Khanesaheb as inadmissible and the Collector Mr.B.P.Patel has taken objection to the president's ruling. "The election of a President under the Bombay District Municipal Act is a statutory duty and an act complete in itself. It is not an order or resolution of a Municipality". (See R.L.A's opinion No.4568, dated the 21st August 1934). The election of Mr.Khanesaheb as President could not therefore be rescinded by the resolution moved on 8th July 1946. The view taken by the Collector Mr.B.P. Patel on this point is not correct.

In the circumstance I am inclined to agree with Mr.Benni and if, even after a warning, Mr.Khanesaheb persists in disallowing any non-confidente motion moved by the majority party, there will be no legal objection to Government removing him from his office on the ground of misconduct.

(sd) D.V. Vyas.

Remembrancer of Legal Affairs.

D.O.R. to G.D.No. 2462 dated the 13th March 1947.

Office of the R.L.A.

At Walchandnagar in Indapur Taluka a big factory is established. Walchandnagar is stated to be a private estate where 25,000 people are residing. Outsiders are not allowed to enter the gates of this estate without the permission of the Managers of Walchandnagar Industries. The whole estate including the houses of labourers is protected by means of a wire fencing. With a view to giving these 25,000 residents the civic rights Governments proposes to constitute that area into a Municipal District. The question for the consideration of the R.L.A. is whether there is any legal objection to so doing.

2. " A modern Municipal Corporation has two aspects one governmental and one quasi-private. In the former it is the agent of the State for the local administration and enforcement of its sovereign power. In the latter it transacts private business for hire, as for instance, when it undertakes to supply to those inhabitants who pay there for utilities and facilities of modern life. The fundamental objects of a Municipal Corporation are the public welfare and Municipal Government. Municipal Corporations are institutions designed for the local Government of important towns and cities." (See Aiyangar's Municipal Corporations in British India, pp.4-5). Five things appear to be essential to the creation of a Corporation, namely:-

(1) Lawful authority of incorporation;

(2) the person or persons to be incorporated;

(3) a corporate name;

(4) Domicile; and

(5) words sufficient in law

(ibid p. 12)

3. Section 4(1) of the Bombay District Municipal Act, 1901 empowers Government to declare by a notification in the Official Gazette any local area to be a municipal district. Under section 7(1) any local area which comprises:-

(a) a city town or station or two or more neighbouring cities, towns and stations with or without any village, suburb or land adjoining the rate, or

(b) a village or suburb or two or more neighbouring villages or suburbs,

may be delcared a permanent Municipal District. The legal as well as popular idea of a town or city is that of owners, community, locality, vicinity; a collective body of people collected or gathered in one mass having a community of interest, as being residents of the same place or locality (see Iyer's Law Lexicon). All persons living at Walchandnagar are residents having a community of interest and consequently Walchandnagar is a town or city, a local area, which can be incorporated into a municipal district and the fact that this local area is a private estate does not make any difference, for by such incorporation the rights in respect of such private estate are in no way contravened. In specifying the limits land adjoining the town can be included. A public street connecting the town with the outside world can thus come

into existence. After incorporation it would be open to the Municipality to acquire under section 50(1) read with section 41 part of the estate required for public purposes such as public streets if a declaration under section 90(5) be not found feasible. The barrier to free movement set up by the proprietors can in this manner be broken. Whether the inhabitants are prepared to submit to the expenses necessary for running a municipality and acquiring property therefore is a question of policy for the Department to decide.

(sd) D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to H. & D. G. D. No. 5246 dated the 22nd May 1947.

Office of the R.L.A.

In re. Lalsukhram (9 B.L.R. 1347) it was held that a Magistrate hearing an appeal of the kind mentioned in section 86 of the Bombay District Municipal Act, 1901 was merely an appell te authority having jurisdiction given by the Act to deal with the question of civil liability, that he was not therefore an inferior Criminal court and that a revision application against his order would not lie to the High Court on the Criminal side under section 435 of the Code of Criminal Procedure, 1898. Since the Magistrate's order under section 86 is one in appeal, there can be no question of an appeal against his order. Consequently no appeal or revision application would be legally feasible.

Section 86 of the Bombay District Municipal Act does not oust the jurisdiction of a Civil Court in cases where the validity or legality of a tax or liability to tax is questioned or where malafides perversity or manifest error are proved. (see Joshi Kalida v. The Dakor Town Municipality, 7 Bom. 399; Pitambardas v. Jambusar Town Municipality, 17 Bom. 510; Narandas v. Ankleshwar Municipality 3 Bom. L.R. 882; The Surat Municipality v. Chhabildas, 16 B.L.R. 749). In the present case the levy of the tax is disputed on the ground that the propery is not liable to tax. Consequently the proper course would be to file a suit against the Municipality for a declaration that the property is not liable to be assessed and for an injunction restraining the Municipality from recovering the tax in pursuance of the notice of demand.

The Collector in his letter at p. 51 ante reports that a notice of demand has been issued on 31-3-1947. A suit may therefore be filed after one month's notice and within six months from the notice of demand i.e. 31-3-1947. (see sect-

ion 167 of the Bombay District Municipal Act).

(sd) D.V.Vyas.

Remembrancer of Legal Affairs.

U.O. to A.R.D., No. 6579, dated the 26th June 1947.

Office of the H.L.A.

The levy of the terminal tax on exported goods by the Nadiad Municipality is clearly void and the fact that the tax levied for the last 25 years cannot make it valid.

(sd) D.V.Vyas.

Remembrancer of Legal Affairs.

E.K;N.10/5/56. U.H. to H.&L.G.D., No, 7903, dated 31st July 1947.

Office of the R.L.A.

Disqualification by imprisonment.

Bombay District Municipal Act, 1901.

Under sub-section (2) of section 15 of the Bombay District Municipal Act, 1901, if any councillor during the term for which he has been elected or appointed becomes disqualified under sub-section (1) he shall be disabled from continuing to be a councillor and his office shall become vacant. Under clause (a) (i) of sub-section (1) a person who has been sentenced by a Criminal Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months or to transportation shall not be a councillor if and so long as such sentence has not expired. The period of imprisonment is immaterial so long as the offence is punishable with imprisonment for a term exceeding six months. The offence for which Mr.Shinde was sentenced to imprisonment for one day is punishable with imprisonment for a term exceeding six months. Consequently Mr. Shinde was disabled from continuing to be a member as soon as he was sentenced to imprisonment. The order passed by the Collector, Bijapur, is correct.

(sd) D.V.Vyas.

Remembrancer of Legal Affairs.

U.O. to Health and Local Government Department No.9784 dated the 7th october 1947.

E.K.N.10/5/56.

Office of the R.L.A.

Bombay District Municipal Act. Deprovincialisation of roads in Alibag Municipal limits.

Seen and returned.

2. On the issue of a notification deprovincialising the road it would vest in the Alibag Municipality under section 50(2) of the Bombay District Municipal Act, 1901 whereupon subject to the provisions of section 90 of the Act it would be the duty of the municipality to make reasonable provision for its maintenance under clause (i) of section 54(1).

(sd) D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to H. & L.G. Department, No.11253, dated the 25th November 1947.

E.K.N.10/5/56.

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